

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CUSTOMS APPLICATION NO. 34 OF 2003

The Commissioner of Customs
(Preventive), Mumbai.

... Applicant.

V/s.

Champalal J. Jain.

... Respondent.

P.S.Jetly for the applicant.

Ms.Aparna H. i/b. Akshar Laws
for the respondent.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 21st June 2006.

P.C. :

. Heard learned counsel for the rival parties. Perused application and the cases referred.

2. This application was admitted vide order dated 10th August, 2005 at the instance of the Revenue since the Revenue was seeking direction against the Tribunal to make reference of the question of law reading as under:

"Whether retracted statements of the accused has any evidentiary value considering the ratio of the decision of the Supreme Court [K.I.Pavunny v. Asst.Collr. (HQ) C.Ex. Collectorate, Cochin, 1997 (90) ELT 242 (SC)]"

3. Mr.Jetly, learned counsel for the Revenue relied upon various judgments of the Supreme Court and this Court, viz.; **Surjeet Singh Chhabra v. Union of India**, 1997 (89) ELT 646 (SC); **K.I.Pavunny v. Asstt. Collr.(HQ), C.Ex.Collectorate**, 1997 (90) ELT 241 (SC); **Naresh J. Sukhawani v. Union of India**, 1996 (83) ELT 258 (SC); and **Ranwolph Charles Luka v. Union of India**, 1996 (83) ELT 274 (Bom.) to contend that the view taken by the Tribunal is not in consonance with the law laid down by various courts.

4. Having heard learned counsel appearing for the Revenue, the law laid down by different Courts and ratio emerging therefrom are not in dispute. However, having examined the facts of this case, it is clear that the case has been decided by the Tribunal in the peculiar facts and circumstances of the case which were brought on record.

5. The Tribunal has found that the statement of the applicant, respondent herein was recorded after completion of panchanama recording of which took place for eight hours. The Tribunal also found that as a fact that panchas were in the Gold (Control) office right from 10.40 p.m. of 10th February, 1989 to 5.30 a.m. of 11th February, 1989

i.e. for eight hours when the panchanama was drawn.

This was highly improbable by the Tribunal.

6. The Tribunal also found that the respondent was in the custody of the Customs officers when his confessional statement was recorded. Thus, confessional statement was found to be not out of free will. The Panch has also stated in his statement that he has signed the panchanama in Hindi without reading it reposing good faith on the customs officer. It is, thus, clear that on the basis of the factual aspects of the matter, the appeal was decided by the Tribunal.

7. In our view, the facts of the cases referred to hereinabove show that the judgments relied upon by the Revenue are not applicable to the case at hand.

8. In the result, no substantial question of law is involved. Application is dismissed with no order as to costs.

(J.P.DEVADHAR, J.)

(V.C.DAGA J.)